

E-340

G2 N86

Copy 2



C314

343



ADDRESSES

AT

THE UNVEILING AND PRESENTATION
OF THE BUST

OF

WILLIAM GASTON

BY THE

NORTH CAROLINA BAR ASSOCIATION

*Delivered in the Hall of the House of
Representatives, November 24, 1914*

RALEIGH
EDWARDS & BROUGHTON PRINTING CO.
1915

In Exchange
Univ. of North Carolina
SEP 27 1933

INTRODUCTORY NOTE

On the evening of November 24, 1914, in the Hall of the House of Representatives, at Raleigh, the North Carolina Bar Association presented to the State of North Carolina a marble bust of the late William Gaston. The bust was copied by Frank H. Packer from a plaster cast executed from life in 1833 by Ball Hughes, now in possession of Judge Gaston's granddaughter, Mrs. Isabel Donaldson Bronson, of Summit, N. J. Hon. Clement Manly, Chairman of the Committee of the Bar Association, presided over the exercises. An address on the life and character of Judge Gaston was delivered by Hon. H. G. Connor, United States Judge for the Eastern District of North Carolina. The bust was presented by Hon. J. Crawford Biggs, president of the North Carolina Bar Association, and accepted on behalf of the State, by Governor Locke Craig. It has been set up in the State Administration Building, in which the Supreme Court of North Carolina holds its sessions.

WILLIAM GASTON

BY HENRY G. CONNOR, UNITED STATES JUDGE OF THE EASTERN
DISTRICT OF NORTH CAROLINA

The *Raleigh Register*, of January 25, 1844, announcing the death of William Gaston, says: "For forty years he has been the ornament of his profession, the idol of his friends, the admiration of all who knew him, the able jurist, the upright Judge, the elegant and accomplished scholar, the urbane and polished gentleman, the meek and dignified Christian. He has gone down from us, like the sun at sea, leaving the brightness of his noon-tide splendor to be equalled by the milder radiance which shall linger and play like a halo of beauty around his memory."

When it is proposed to erect in the building, dedicated by the State, to the housing of her Library, the collections of her Historical Commission, the portraits of her eminent dead, and in which her Supreme Court sits to expound her laws, a memorial of William Gaston, it is but natural that men of this day should ask what manner of man he was and in what way did he render high service to the State.

Carlyle says: "If an individual is of sufficient consequence to have his life and character recorded for public remembrance . . . the public ought to be made acquainted with all of the inward springs and relations of his character. How did the world, and man's life, from his particular position, represent themselves to his mind. How did coexisting circumstances modify him from without. How did he modify them from within. With what endeavors and efficacy rule over them; with what resistance, and what suffering, sink under them?" Beginning with our limited vision, and power of expression, with what we call heredity, the next, and always interesting, question in respect to every human being is that put by the Sage of Chelsea.

William Gaston, on his paternal side, was of the blood of the French Huguenot. It is from Jean Gaston, who emigrated from France to Scotland in 1640, that the family traces its ancestry. His descendants, in 1662, moved to County

Antrim, Ireland, and later, with the movement of the Scotch Irish of that section, came to America. One of these, Dr. Alexander Gaston, a surgeon of the Royal Navy, came to New Bern, N. C., in 1765. Margaret Sharpe, an English lady of Roman Catholic parentage, came to New Bern on a visit to her brothers, where she met and married Dr. Gaston, and from this union was born, on the 19th day of September, 1778, William Gaston. In the characteristics of these lines of ancestry, so distinctively and frequently antagonistically marked in their history, may be traced many of the mental and moral qualities illustrated in the life and character of the son of Alexander Gaston and Margaret Sharpe.

On August 20, 1781, with her infant in her arms, on her knees begging that his life be spared, Mrs. Gaston witnessed the murder of her husband, by British soldiers and Tories. He was among the most zealous and active patriots of New Bern. William Gaston, his widowed mother and her infant daughter, were the only ones of his race and lineage left in this State, by the brutality of the Tories. Mrs. Gaston's brothers died prior to the outbreak of the war. The explanation of such success as he achieved must, therefore, be sought from other sources than the aid of family influence. Although tendering his services to his country, when war was threatened with France, in 1799, he was never a soldier. During the larger portion of his life, his political alignment was with the minority party in the State. On a notable occasion he said: "Having been trained from infancy to worship God according to the usages, and carefully instructed in the creed, of the most ancient and numerous society of Christians in the world, after arriving at mature age, I deliberately embraced, from conviction, the faith which had been instilled into my mind by maternal piety. Without, I trust, offensive ostentation, I have felt myself bound, outwardly, to profess what I inwardly believe, and am, therefore, an avowed, though unworthy, member of the Roman Catholic Church." For more than fifty years, no kinsman of his has resided in this State.

These facts are referred to for the purpose of emphasizing the truth that he entered upon, and throughout his life maintained, none of those relationships, which are supposed and

usually did, at that time, promote success in a private or public career. That William Gaston, under these conditions, acquired, and at the time of his death, retained the position in the estimation and affection of the people of the State and Nation, and that seventy years after his death the proposition made by the present Chief Justice, that a marble bust of him be placed in the State Administration Building, met with a cordial and generous response, is cogent evidence of the permanence of the impression which he made while living and that his memory is held in sacred regard by the people of North Carolina.

It is by invitation of the Committee of the Bar Association, that I am permitted to take the part assigned me in these ceremonies. If I shall unduly impose upon your time, I must crave your kind indulgence and plead, in extenuation of my fault, admiration of his character which it has been my privilege to study, not in the language of posthumous eulogy, the praise of partisan political adherents, or of those bound to him by the strong ties of fellowship in a common religious faith. The answer to Carlyle's question, as applied to William Gaston, is found in a study of the letters written by him to his mother, beginning at the thirteenth year of his age and continuing until her death, to his family, to his personal and professional associates, and to intimate friends, among whom were some of the noted men in the State and Nation; of his legal arguments, congressional and legislative speeches, his literary addresses, and his judicial opinions.

It is not merely in the usual formula of eulogy that, in a study of the life of William Gaston, must be placed, in pre-eminent position, the high qualities, singular devotion of his mother, and her influence upon his life. Judge Mathias E. Manly writes of her: "Bereft of her husband, in a strange land, without relations . . . with heroic courage, she met and discharged the trust imposed upon her in a manner which marks her as a woman of singular power of mind and strength of character. Her son, three years of age, and an infant daughter, remained the sole objects of her care. . . . She never laid aside the habiliments of mourning; the anniversary of her husband's murder was kept as a day of fasting and

prayer. The great object of her life was the instruction of her son, imbuing his mind with the high principles, the noble integrity and Christian faith which shone conspicuous in herself. Her income being small, she practiced economy to enable her to gratify her dearest wish and procure for him a complete education." Another says: "The serene energy of her character, her pure affection and high sense of duty to her children, above all, her profound sentiment of religion, sustained her, and when others might have sunk in despair, her conduct rose to the highest standard of true, maternal Christian heroism."

When her son was but thirteen years of age, she sent him to Philadelphia, for preparation to enter Georgetown College, under the care of the Rev. Mr. Fleming. Her letters to him abound with exhortations to piety and the practice of his religious duties, coupled with admonitions to industry, fidelity to duty and prudence. From Philadelphia, August 25, 1791, he writes his mother: "I go to mass at six o'clock in the morning, and then I am writing French exercises until eight, when I go to English school, where I stay till twelve. What time I have before dinner is taken up in reading Latin and Greek. From five o'clock in the evening (which is the hour the English school breaks up), until six, I go to Mr. Fleming's library, where I study such authors as he thinks proper. Three times in the week I go to French school, where I stay an hour." In his last letter from Philadelphia, he writes: "It would be a great piece of ingratitude if I was not to inform you how well I am treated by Mr. Fleming—no parent could take more care of me than he does." It is interesting to note the enthusiasm, and the prophetic vision of the boy of thirteen, when he arrives at Georgetown, November 5, 1791, and is enrolled as the first student of the then infant college. He writes: "A more beautiful situation than that in which the College is, could not be imagined. On a high hill, with a view on one side, of the river, on the other, of the town, quite surrounded with trees, and everything that could make it beautiful or useful, it stands, as if it was made on purpose for the erection of some such building." The realization of his vision is found in the long, useful and honorable career of this now great University.

On December 29, he writes: "The College will be opened

next Monday which, you may suppose, will not be disagreeable to me, as I long to be at school." Dr. Plunket, the President of the College, writes Mrs. Gaston: "I owe him the justice to assure you that he is the best scholar and most exemplary youth in Georgetown." Father Fleming says: "I have a presentiment that the child to whom you gave birth will become your Spiritual Father and be a blessing to his native country. . . . I have constantly the most favorable accounts of your charming son's progress in virtue and learning." The boy writes enthusiastically of the growth of the College, saying: "Our College has got a great reputation. From all quarters boys come to it." He writes for the following books: "Novum Testamentum, Horace, Ainsworth's Latin Dictionary, Lucian, Xenophon, a Treatise on the Art of Investigation, Geography." We find but little difficulty in concurring with him in the opinion that "he is not wasting his time."

His course at Georgetown was brought to a close, at the end of two years, by ill health. His mother became alarmed for him in this respect, and called him home. For two years he attended the school of the Rev. Mr. Irvine in New Bern, winning high honors in his studies. He entered Princeton College, September 12, 1794, writing his mother that he had arrived at the College and had been introduced to several of the students, saying: "They treated me with the greatest politeness . . . for complaisance, civility and good breeding I have scarcely seen their equals. Their behavior, in short, quite charmed me." His letters to his mother, from Princeton, abound in expressions of affection and appreciation of the sacrifices made by her to secure to him the privilege of acquiring an education. During his term there his mother's dwelling was destroyed by fire. He was anxious to leave College and begin work at once to help her, but this she firmly refused to permit, writing: "Your education is too near my heart to take you away before you finish your studies. . . . When you finish your studies I mean to sell as much of my stock as will pay my debts. If Almighty God be pleased to bless us with good health, we have every reason to be thankful and happy. I have this consolation, that it was not through negligence or extravagance that occasioned these misfortunes.

I am happy, and hope to be much more so, when I embrace my beloved William."

That the pious Catholic mother was solicitous regarding the spiritual welfare of her son is manifest from her constant insistence that he keep the integrity of his faith. She writes: "I hope you correspond with your good friends at Georgetown—be very particular in observing their advice and very attentive to your spiritual exercises that God may bless you in your ways."

We find, among his papers, yellowed with age, a neatly written letter to his sister, full of sage counsel and prudential, brotherly advice. On the corner, in the immature handwriting of a child, the words: "First letter I ever had from dear brother." The correspondence between them is of lively interest, containing the town news, the doings of the boys and girls, with frequent reference to the mother, and expressions of affection for her. She gives an account of the disastrous fire which destroyed the home. An "exact description" of the new house is given, "planned chiefly by mama." "It fronts North and South—the West end being twenty feet from that fence where the cedar tree and fig bushes are in the bottom of the garden. Its North side 26 feet from that fence which runs between Mr. Simpson and us. The house will be small as to what the other was, being 36 feet by 18 and a piazza to the southwards. The foundation is dug and the cellar is to be raised with brick, airy and pleasant. Mama proposes leasing the front of the lot, when opportunity offers, till you are of age, leaving only a gateway that is ten feet opposite the piazza. She says that you must not laugh at her for putting her house in the garden." Following a description of the kitchen, with a reference to the fire, she concludes: "I hope it is all for the best." The mother fills the sheet of paper with sound advice and saintly counsel. Before the new house is finished, the "dreadful storm" came, of which a graphic description is given. The chimneys of the new house "being green" were blown down. The brother writes of his anticipated pleasure of living in "that small house, but to me, the most valuable in the world, since it contains two infinitely precious treasures—the tenderest of mothers and most amiable of sisters." In this home of

small proportions and modest pretensions, dwelt those who nurtured, and found strength in the nurture, of Christian piety and social graces; wrought into the warp and woof of their lives the fibrous strength of manhood and womanhood. From it came the wife of one of North Carolina's most learned and eminent Chief Justices and he, whom another Chief Justice declared was "a good man and a great judge."

The mother, in her last letter before her son's graduation, writes: "A friend warrants that you would throw off your 'bigotry' and 'superstition' before your return. I hope that you will return with virtue and piety, the same as you left me with only improvement; as you improve in learning and knowledge far greater will be your duty to God for all his blessings." To this the son replies: "My dear mother will see that I have not altogether forgotten her useful and pious instructions or that I have not altogether lost my 'bigotry' and attachment to 'superstition.'" He writes immediately before the time for his graduation: "I must go to Philadelphia to perform my Easter duties."

At the Commencement of 1796, William Gaston graduated at Princeton, with the first honors of his class, delivering the Latin Salutatory. His mother received him to his home "restraining the outburst of maternal joy and, ere she embraced him, laid her hand upon his head, exclaiming: "My God, I thank Thee," not for the honors he brought, but because "he had preserved the innocence of his youth and the practice of his religion." When one reflects upon the intensity of the religious faith, and the test to which that faith had been subjected, it is not difficult to understand the gratitude which filled the heart, and the joy with which Margaret Gaston lifted up her voice in thanks and praise. Sincere, faithful men may differ in respect to doctrine and dogma; such faith and devotion as Margaret Gaston's must ever command and receive the profound admiration and reverence of every Christian parent. In their possession and exercise are to be found the solution of the deepest mysteries of human life, and the strength to meet and discharge its duties. Happily, at all times, North Carolina has had such mothers, who have given to her service such sons. They find the fulness of joy in the consecration of

their lives to this Divinely appointed work, seeking not to cast away the precious privilege of motherhood to enter upon other and lower spheres of service. May she always have these noble women and may she always honor and hold their memories in sacred keeping, grateful for their example, and for the sons whom they give to promote her glory, honor and welfare.

Upon his graduation, Gaston entered upon the study of law, under the direction of Francis Xavier Martin, one of the most interesting and, in the manner and extent of his achievement, remarkable men who came to the State in the early days of her history. At eighteen years of age, a native of France, he came to New Bern, entirely unacquainted with our language or laws. Taking up the trade of a printer, he acquired his education, becoming not only a publisher, but editor of our statutes, and reports of decided cases and of editions of a number of works of the civilians. He also wrote a history of the State. As a member of the Bar, he followed his profession with success, until appointed a Federal Judge in the Louisiana Territory and, upon its organization as a State, held the positions of Attorney-General and Chief Justice of Louisiana. The latter office he filled until his death in 1846. During the last eight years of his life he was totally blind. Mr. Dart, in his interesting address on the History of the Supreme Court of Louisiana, says: "Martin, considered from any angle, was a profound scholar. His legal mind had also been formulated in the common law field, but he had the advantage of the language of his birthplace (France), and he had studied the masters of the civil law *con amore*. Indeed, it is said that, his edition of Pothier on Obligations was translated, from book to type, at his printer's case in North Carolina. This early American print is . . . one of the rare treasures of the legal bibliophile."

At the end of two years Gaston received his license to practice law. He qualified at the March Term, 1798, of the Court of Craven County. The "Brief" in his "First Case" is carefully prepared, citing the numerous statutes of the State in regard to the liability of the sheriff as special bail, when the imprisoned debtor had escaped. The dockets of Craven and the surrounding counties show that he met with fair success as an attorney.

In 1800, he was elected to the State Senate. Dr. Battle, referring to the attempt to take from the University the escheated lands, says: "William Gaston, at the age of twenty-two, beginning his long career of public service, always advocating liberal and progressive ideas," was among the Senators "who stood by the University."

Wheeler says: "The labors of his profession, and duties to those who entrusted their lives and fortunes to his hands, with his small patrimony, denied to him that service to the people that they required." In January, 1800, upon the invitation of St. John's Lodge of Masons, Gaston delivered an address "on the distressing event of the death of their late brother and beloved fellow citizen, George Washington," for which he received "their public and unanimous grateful consideration."

He did not appear again in the Legislature until 1808, when he was a member of the House of Commons, of which body he was chosen Speaker. At this session, Gaston drew, and for the Committee reported, a bill for the regulation of descents. The original draft of the bill, with the report of the Committee, is among his papers. This statute remained, with a single amendment, our canon of descents until 1868, and so continues substantially to this day. He also drew the statute making provision for children born subsequent to the execution of the will of their father.

Between 1800 and 1808, he pursued the practice of the law with increasing success, attending the courts in the New Bern and Wilmington Districts, the Federal and Supreme Courts at Raleigh. A letter from Samuel R. Jocelyn, an attorney residing at Wilmington, gives an amusing account of the fate of a law suit in which Gaston was interested, showing that, in those days, the delays of the law, of which the reformers of this day so justly complain, were not unknown. He writes:

With respect to Colonel R's suit, everything has tended to delay—the sheriff either did not receive, or lost, the first writ—at July Term, violent rains prevented our attendance. In October, the clerk set out for the Court, as usual, drunk. He deposited the records in a certain box, which was committed to the care of a negro mounted upon a mule. In the course of their progress, the clerk so managed that his horse ran off and precipitated His Worship into a thicket and demolished the chair—the mule, not to be

outdone in such merry gambols, exhibited divers antic movements and ended the performance by prostrating the *custos legis*, for the time being, and scattered the records through various parts of the adjoining woods—this marvelous feat prevented business during the term. Previous to the January term last, this precious Clerk was removed from all sublunary Courts and no venire was issued. At January term a new clerk was appointed, but the widow of the deceased, or the mule, I don't know which, have refused to part with the records. However, it seems that the present clerk was appointed by a number less than the majority of the justices of the county and an unsuccessful candidate intends to dispute the validity of the appointment—so that, when I am to get a judgment against Colonel R., only Jefferson himself can tell.

Gaston was, at this time, an ardent Federalist. He believed, as probably did those of his party generally, that Mr. Jefferson and his followers, were subservient to French influence. He thoroughly detested and distrusted Napoleon.

Gaston was elected a member of the Thirteenth Congress, taking his seat May 24, 1813. On the State's delegation, were Nathaniel Macon, Peter Forney, William R. King, Bartlett Yancey and others. He met Daniel Webster, Henry Clay, John C. Calhoun, Langdon Cheeves, William Lowndes, Felix Grundy and others, who became more or less famous. He stood with his party in opposition to Madison's administration. Being criticized by Mr. Grundy for his support of a resolution introduced by Mr. Webster, Gaston retorted with much spirit, saying:

Any charge of partiality to the cause of the enemy, as contrasted with that of my country, so far as regards me, would be utterly untrue. The bare suspicion of it is intolerable. It will not be egotism, I trust, to add that, baptized an American in the blood of a murdered father; bound to my native land by every moral and natural tie that can fasten on the heart of man, with no motive of interest, passion or prejudice to seduce the loyalty of my affections, never can I separate myself from the cause of my country, however that cause may have been betrayed by those in whose care it is confided.

On a resolution providing for the election of Presidential electors by districts, Gaston made a very able argument in support of the proposition. His speech on the Loan Bill gave him much reputation. Mr. Calhoun, replying to this speech,

referred to a statement made by Gaston, in a manner which created a scene, which, but for moderation and courtesy of both, may have had unpleasant results. Referring to a war with Canada, Gaston said:

There is something in the character of a war made upon the people of a country to force them to abandon a government which they cherish and to become the subjects, or associates of their invaders, which necessarily involves calamities beyond those incident to ordinary wars. Among us, some remain who remember the horrors of the invasion of the Revolution and others of us who have hung with reverence on the lips of narrative old age, as it related the interesting tale.

He was a member of the Fourteenth Congress, serving on the Committee on Ways and Means. Mr. Clay was reelected Speaker. The majority, with the aid of the Speaker, had, at the previous session, effectively used the Previous Question to prevent debate upon, and amendments to, measures which were deemed essential to success in carrying out the policy of the administration. Mr. Stanford, of North Carolina, moved to expunge the rule which related to the Previous Question. Mr. Randolph supported the resolution in a short, incisive speech, saying that in the English House of Commons "they would as soon think of stopping the volleyed lightning of heaven as of stopping the Elder Pitt—that there debate was free." This called forth from Mr. Clay a spirited defence of the rule, and the manner in which it was enforced by the majority of the House. At the conclusion of Mr. Clay's speech, Mr. Gaston arose and said:

The subject was of paramount importance and had the most imperious claims on the attention of every individual of this honorable body—he had witnessed the growth of this rule from its first intrusion here to its present, all controlling domination. . . . He rejoiced at the opposition which the motion of his colleague has encountered. If this hideous rule could have been vindicated, it should have received that vindication from the gentleman who has just resumed his seat. If his ingenuity and zeal combined, could form for the Previous Question no other defense than that which we have heard, the Previous Question can not be defended. If, beneath his shield, it finds so slight a shelter, it must fall a victim to the just, though long delayed, vengeance of awakened and in-

dignant freedom. If Hector cannot save his Troy, the doom of Troy is fixed by fate.

He gave an interesting and exhaustive history of the origin and development of the Previous Question, tracing it to the Parliament of 1672. Concluding an account of the manner in which the rule was enforced for the purpose, as he argued, of "stifling discussion" and "cutting off amendments," he said that the only argument advanced to excuse "this outrage on parliamentary law" was "necessity," "the excuse for every folly, the pretext for every crime. Necessity, which the miserable culprit, who steals a loaf of bread to feed a starving family, pleads in vain at the bar of your Criminal Courts, but which successful tyrants, in every age, have made the apology for their usurpations on freedom." Colonel William Winston Seaton wrote: "Perhaps the most brilliant of Judge Gaston's legislative tournaments was a conflict with Mr. Clay on the Previous Question, as a rule of order. Mr. Gaston went into the debate after a careful examination of all the points of law and history that had been enacted in the mother country, and our own, on the subject and caught Mr. Clay wholly unprepared. Eminent statesman and patriot as he was, Mr. Clay was, nevertheless, human and retired from the contest somewhat soured." Governor Swain says: "Mr. Gaston unhorsed Mr. Clay in the debate." Their personal relations were strained until some years afterwards, Colonel Seaton brought them together at his table, and by a tactful toast, restored kind and cordial intercourse. When Mr. Clay spoke in Raleigh, June 1844, he paid a very handsome tribute to Gaston. Chancellor Kent wrote, some years later, that he had found the speech in a volume of his pamphlets, saying: "I have read it again this morning and, permit me to say, it is a masterly and scientific legal and constitutional argument, with the most diligent examination, and keen critical analysis of the documentary authorities. It is an admirable production." He refers to the speech in a note to his Commentaries, (Vol. I. p. 238). Mr. John Sargeant, of Philadelphia, said that it "was the best discussion of the subject that he had ever met with."

Gaston spoke in favor of the National Bank and voted against the Tariff of 1816. His opposition to the administra-

tion, and the course of the government in connection with the War of 1812, was very intense, probably more so than it should have been.

In an address delivered by Mr. Samuel F. Phillips, Solicitor General of the United States, at the installation of the Law School of the Columbian University in 1884, he said: "Mr. Gaston was in Congress for two terms only, seventy years since. I do not characterize that part of his career unduly in suggesting that no man upon that theater, has done more for solid and lasting reputation in so short a time. Making much of the fame which Mr. Webster was then achieving, Mr. Ticknor chose to mark it by saying that 'with Gaston and Hanson he stood in the front rank of the then opposition, . . . Mr. Gaston, while yet in the full vigor of his powers, turned from the political visions, which no doubt attended his earlier life, to engrossing professional occupation and that domestic peace, which he was so well fitted to enjoy and to enhance."

It is doubtful whether Mr. Gaston would have achieved large success, or found happiness, in Congressional service. He was somewhat impetuous in his temperament when young, being, as he once said, "the son of an Irishman." His political convictions were intense and not subject to change. The three statesmen whom he most admired were Washington, Hamilton and Marshall. He regarded Jefferson as a visionary and impracticable philosopher, inclined to French infidelity and under the influence of French theorists. Madison and Monroe, he regarded as patriotic citizens and statesmen, but dominated by Jefferson and his school of thought. He did not admire Mr. Calhoun and strongly opposed his "doctrines." His relations with Mr. Webster were very cordial. A number of interesting letters from Mr. Webster are found among his papers. It was, therefore, not unnatural that he found but little attraction in the National service after the downfall of the Federalists. Governor Swain says that when he was elected to the judgeship in 1831, Gaston advised him most earnestly never to permit himself, except under an overpowering sense of public duty, to be seduced into a return into political life. He said he was growing old, and endeavored, as much as possible, to withdraw attention from the threatening aspect of public affairs, that he

had always endeavored to place country above party, and that yet, upon a calm review of his whole course of life, too many instances presented themselves when he convicted himself of having been influenced, to an extent of which he had no suspicion at the moment, by other than purely patriotic considerations. In addition to this, it had been his fate, on repeated occasions, to be most loudly applauded for what, in his own conscience, he regarded as least praiseworthy, and to be bitterly reviled for what he considered to be the purest and most praiseworthy acts of his public life. Gaston entered political life at a time when, as our history teaches, the most bitter animosities are developed—the disintegration of party organization and new adjustment of party lines. To men of strong convictions and party loyalty, it is always difficult to form new alignments and painful to witness the ease with which many of those with whom they have been associated, adjust their political status to more popular and promising associations. Such was the fate of many of the Federalists of the early years of the last century, and of the Whigs of half century later, to say nothing of our own day. During the remaining years of his life, Gaston found his political association with the Whigs. His correspondence shows that his counsel was frequently sought by the State and National leaders of that party. In the State he favored, and took a very deep interest in internal improvements, public education and other measures of the Whig party, which would now be termed “progressive.”

At the session of 1818, he was a member of the State Senate and chairman of the Judiciary Committee. The Legislature, at this session, contained an unusually large number of able men, among whom were James Iredell the younger, Willie P. Mangum, Romulus M. Saunders, Archibald D. Murphey. Governor Branch, in his message, strongly recommended that the judicial system of the State be placed upon a stronger, more efficient, and more permanent basis. The necessity for such legislation is explained in the very interesting and enlightening address of Dr. Kemp P. Battle (103 N. C. Rep., Appendix), on the “History of the Supreme Court.” As chairman of the committee, Gaston prepared a bill, sustained by a very able report, which should be carefully read by students of our judi-

cial history. The legislation proposed and adopted, secured the establishment of the Supreme Court, composed of three justices, one of whom, elected by the others, served as Chief Justice, with its jurisdiction as it remained until the adoption of the Constitution of 1868. The Court was, and continued to be, the object of attack, both in respect to its existence and its independence. At every session of the Assembly, for many years, bills were introduced either to abolish the Court, or reduce the salaries of the judges.

At the session of 1828-'29 the great debate on the banks took place, in which Gaston took a leading part. Under the leadership of Robert Potter, of Granville, a strenuous effort was made to destroy the State banks, charging them with violation of their charters. The report of the majority of the Committee composed of Graham, Mendenhall, Swain and others recommended that, upon a fixed day, the banks be required to resume specie payments. A minority, led by Potter, recommended that the Attorney-General be directed to institute writs of *quo warranto* for their dissolution and the confiscation of their property. The debate was conducted with great spirit and, at times, with much bitterness on both sides with Swain, Spruill, Nash and Gaston leading the majority, and Potter the minority. Swain made an able and interesting speech, giving a history of the legislation in regard to currency and banking in the State since 1783. Gaston said:

I have lived long enough to distrust the projectors, and to regard bold experiments with some degree of apprehension. Violent changes are never made without producing consequences unforeseen and unexpected. True wisdom endeavors humbly to emulate the wisdom hung them upon high pillars, so as to render it difficult for the most beneficial results by means scarcely perceptible, acting steadily, gradually, constantly. Nor should true courage ever be confounded with the fool-hardiness which rushes to the accomplishment of its object, blind to the dangers and reckless of the consequences of its deed.

To the proposition to enact an *ex post facto* law, he said:

The detestable Caligula wrote his laws in small characters, and which is displayed in the operations of nature which produces the people to discover the penalties to which they were made liable, and for this atrocious tyranny, his name has been handed down with

execration to an indignant posterity. But even he did prescribe the penalty before the deed. It was *possible* to know the law, and the consequences of its violation, and although the citizen might be ensnared, he was not kept in necessary ignorance. But a law fixing the penal consequences of an act—after the act is done, is an absurdity in terms. The very nature of society forbids it—the eternal principles of justice stamp it with reprobation and the Genius of Freedom mocks at its impotent and insolent claims to respect.

The minority report was rejected by the vote of the Speaker, Thomas Settle, making a tie.

The State House was destroyed by fire June 21, 1831. At the next succeeding session of the Assembly, the proposition to vote an appropriation for building a new Capitol at Raleigh, aroused intense interest and brought into the discussion many questions which had, for years, divided the people. The controversy between Fayetteville and Raleigh, in regard to the location of the Capitol, which began in the Convention of 1789, was revived by a proposition to remove the Capitol to Fayetteville. The controversy between the East and the West regarding the basis of legislative representation, and internal improvements, had become very intense. Gaston sat for New Bern. David F. Caldwell was President of the Senate, Charles F. Fisher, of Salisbury, Speaker of the House. The debate was opened by Judge Seawell in the Senate, who introduced a bill to appropriate \$30,000 "for rebuilding the Capitol in the city of Raleigh." Judge Toomer, representing Fayetteville, opposed it. In the House, William H. Haywood, Jr., of Wake, W. F. Leake of Richmond, John Bragg of Warren, Hugh McQueen of Chatham, Louis D. Henry of Cumberland, and Gaston of New Bern, took part in the debate, the last named speaking twice for the appropriation.

Colonel R. B. Creecy says that in his later boyhood he was in Raleigh, 1831, when the Legislature was in session, and all Raleigh was agog about the removal of the Capitol to Fayetteville, and the appropriation for rebuilding the Capitol was under discussion. "I heard the speech of Mr. Gaston upon the question and it was a masterpiece of intellectual force and eloquence. . . . He spoke twice on the subject and his last speech was the ablest ever made in a deliberative as-

sembly in North Carolina. His first speech was a feeler, a fine piece of legislative strategy. Unfortunately, the last speech was not published in the debate, as was the first, but it was the grand terminal of the debate." Allowing for his ardent admiration of Gaston, a perusal of the first speech shows that, in respect to it, Colonel Creecy was not extravagant in its praise. This session closed Gaston's legislative service.

Wheeler says of his style as a parliamentary speaker :

It was my fortune to sit through two sessions of the Legislature in the seat next to Judge Gaston, and also on the Committee of the Judiciary with him. He had, or seemed to have, when he first arose to speak, a modesty that was embarrassing to himself as it was to his audience. He trembled perceptibly at first, but after a few moments, his emphatic and deliberate manner and subdued tones commanded profound silence and attention. He became perfectly possessed and commenced his argument with matchless and thrilling eloquence. As he progressed, the grandeur of his expression seemed to increase while his illustrations were as luminous as a sunbeam, and his arguments carried conviction to the minds of his entranced auditors. There was no sophistry to mislead, no meretricious ornament to beguile, his person seemed almost inspired, and his countenance expressed a benignity of soul which marked his whole life and character.

During these years, Gaston enjoyed a large practice in the eastern counties, the Federal Court and in the Supreme Court of the State. Governor Swain says that when he first saw the Supreme Court in session in 1822, "Chief Justice Taylor, the Mansfield of North Carolina jurisprudence, Judge Hall, proverbial for integrity, amiability and sound common sense, and Judge Henderson, who in genius, judgment and power of fascination in social intercourse was without his peer, were the three Judges. William Drew, standing on the partition which divides great wit from frenzy, was the Attorney-General. Francis L. Hawks, who had not yet attained the twenty-fifth year of his age, but had already given favorable promise of future eminence, was the Reporter. Of the members of the Bar, Gaston, from the East, was *facile princeps*. Mr. Badger was, at that time, making reputation as the youngest judge on the bench. Archibald Henderson and Joseph Wilson, from the West, Archibald D. Murphey and Thomas Ruffin, from the

Hillsborough section, and Judge Seawell, Gavin Hogg and Moses Mordecai, from Raleigh, constituted an exceptionally strong Bar."

Time does not permit an extended notice of many of the important and interesting cases argued by Gaston. In *ex parte* Thompson (10 N. C., 355), the right of unnaturalized persons to receive a license to practice in our courts was argued by Gaston and Ruffin for, and Seawell against, the applicants. In *State v. Antonio*, Gaston argued in favor of the right of an alien, upon trial in our Courts, to demand a jury *de meditate lingue* based upon the English statute of 28th Edward III. In *Trustees v. Dickerson* (12 N. C., 189), contrary to Gaston's argument, it was held that a bequest of slaves to the Trustees of the Society of Friends was void, because of the manifest purpose of procuring their emancipation. During these years Gaston enjoyed a large share of the Supreme Court practice.

The North Carolina Reports, 1818 to 1835, are enriched with full notes of the arguments of counsel. Ruffin, Mordecai, Hogg, Cameron, Badger, Seawell, Devereux, Gaston and others furnished the Court with arsenals of arguments, from which to draw in deciding causes and writing opinions. This was before the days of encyclopedias, and other boundless and bottomless reservoirs "of cases in point." Probably then only arguable cases found their way to the Court.

Dr. Battle says: "The members of the Supreme Court Bar prepared, with careful study, their arguments, cogent in logic, mighty in language and fortified by precedent." A strong Supreme Court Bar is a most efficient agency in the making of a strong Court. It may not be entirely irrelevant to commend to the younger brethren a careful study of the Reports of Hawks, Devereux, and Devereux & Battle, rather than the spending of their entire time in "hunting for a case," in volumes of a thousand pages which, when supposed to be found, is based upon a local statute. An illustration of Gaston's style of presenting a cause is found in *Taylor v. Parsley*, 19 N. C. Rep., 125. In support of the claim of a widow of a deceased debtor to dower in lands conveyed in trust, he said:

It is supported by reason, humanity, justice and policy. By reason, for the widow's claim was originally excluded against

reason; by humanity, which would save the helpless widow and children from being turned houseless on the world, banished from the home where they had known a father's society and affection; by justice, for the widow has bought her claim and paid for it the highest price known to the law; and by policy for, in the wreck of misery, a plank should be afforded to the surviving sufferers. These deeds of trust are tremendous engines, against whose explosions, some sheltered nook should be secured for the helpless.

During these years, in addition to the labors imposed by his extensive practice, he was President of the Bank of New Bern, Chairman of the Trustees of the New Bern Academy, and frequently a member of the General Assembly. By the death of his last wife, the education of a son and four daughters was committed to his care. In none of the relations of his life are the finest and highest qualities of Mr. Gaston more strongly illustrated than in his correspondence with his daughters. His letters were written frequently, after the day's labor in court, consultation and preparation of causes, arguments in the Supreme Court, or service in the Legislature. They are models of wise counsel, exhortations to piety, industry and the cultivation of the graces of womanhood.

The honorary degree of Doctor of Laws was conferred upon him by the University of Pennsylvania (1819), and Columbia College (1825). On September 29, 1826, Gaston wrote Mr. William Sullivan of Boston, that he "had learned, from the public prints," that the degree of Doctor of Law had been conferred upon him by Harvard University, and he asks Mr. Sullivan to tell him "what is usual, what is expected of him who is honored on such occasions." This inquiry brought an interesting letter from Judge Story to Mr. Sullivan, which was transmitted to Mr. Gaston, in which he says:

You are right in the suggestion that I took an "active part" in procuring this degree, for I admit that the suggestion originally came from me, but in justice I ought to add that, as soon as Mr. Gaston's name was mentioned, there was an instantaneous assent on the part of the whole corporation. . . . My reason for naming Mr. Gaston was because he is one of the most distinguished of American lawyers, in the highest sense of the phrase; because he is eminent as a statesman; and because as a private gentleman he is all that one can wish or desire. . . . I consider our appointment as conferring honor on ourselves and

not on Mr. Gaston. I am proud that he should stand on our catalogue truly a Doctor of Laws, whom to know is to respect.

At the Commencement of the University of North Carolina, 1832, Gaston delivered the literary address before the graduating class. Colonel Creecy, then a student, says: "The appointment of Gaston drew a large concourse of visitors from all parts of the State; the largest that ever attended a Commencement before. Gaston came a day or two before the delivery of the address. He became at once the cynosure of all eyes. His manner was grave, courteous and unostentatious. He was affable, with dignity and companionable without familiarity. . . . The June day was auspicious. . . . With some difficulty we procured a scholar's black silk gown, large enough for Gaston to wear. The procession was formed at the Old South Building. On one side of Gaston was Tom Ashe, with the trained step of an English grenadier, with the proud and grand visage that bespoke his lineage. On the other side was Clingman, awkward, gawky, as a plowman's prentice boy, but with a brain that Webster or Cuvier might have envied. . . . [The address] was a grand effort . . . and should be in the hands of every schoolboy and of every man of generous aspirations in the State." Dr. Battle (*History of the University*, Vol. I, 344) says: "The address met with public favor to a most extraordinary degree. It ran through four editions, the first of 5,000." It was also published by La Grange College, Alabama, and by Mr. Thomas Whyte of Richmond. In 1858, a fifth edition was published by the two Literary Societies of the University of North Carolina. The fourth edition contains a letter of high commendation by Judge Marshall. In a letter to Gaston, Judge Marshall says: "If anything could surpass the sound and correct advice given to the student for the direction of his early youth, it would be that intended for his government when entering on the great theater of human action." I have seen but few copies of this admirable address. It is doubtful whether, except in the keeping of the few who preserve this character of literature, it is to be found. Referring to "the worst evil that effects the southern part of our confederacy," he said:

Full well do you know to what I refer for, on this subject, there is with all of us, a morbid sensitiveness which gives warning even to an approach to it. Disguise the truth as we may, and throw the blame where he will, it is slavery which more than any other cause, keeps us back in the career of improvement. It stifles industry and represses enterprise, it is fatal to economy and providence, it discourages skill, it imperils our strength as a community and poisons morals at the fountain head. How this evil is to be encountered, how subdued, is indeed a difficult and delicate inquiry, which this is not the time to examine, nor the occasion to discuss. I felt, however, that I would not discharge my duty, without referring to this subject as one which ought to engage the prudence, moderation and firmness of those who, sooner or later, must act decisively upon it.

Dr. Battle says: "It is remarkable that when the public mind was inflamed peculiarly on account of the bloody insurrection of Nat Turner in the preceding year, the orator should have frankly acknowledged himself an advocate of the ultimate abolition of slavery and that the audience cheered the utterance. . . . This bold language did not weaken his standing in the State."

Mr. Phillips gives his "earliest personal recollections" of Gaston, on this occasion. He says:

The crowd was too great to admit such as I then was, by open methods at the regular entrance, but, being well assisted, I climbed in at a window and, with the usual luck of an enterprising child, soon found myself in a commanding position, within a quarter otherwise exclusively devoted, by the gallant marshals of the day, to ladies, whence I surveyed the scene with the eager eyes of long ago. Mr. Gaston was speaking, I had no conception what about, but after a short while I did notice, with interest, that while the audience was applauding at the close, the speaker dramatically waved his hand and called upon the band in attendance for "Hail Columbia." . . . He had thought proper, it seems, to occupy the last part of his hour in a spirited attack upon the doctrine of nullification then fomenting beyond our State's southern border.

In the graduating class of that year were Thomas S. Ashe, Thomas L. Clingman, and James C. Dobbin, all of whom rendered service and achieved high distinction in the State and Nation.

Chief Justice Taylor died January 29, 1829. The 16th volume of North Carolina Reports contains a "Memorial" of him of

singular beauty. He was succeeded by Judge Leonard Henderson, who had been an Associate Justice since the organization of the court in 1818. Judge Thomas Ruffin was elected one of the Associate Justices (1829) upon the death of Judge Taylor and, upon the resignation of Judge Hall (1832), who had also been Associate Justice since 1818, Judge Daniel was elected. Chief Justice Henderson died August 13, 1833. At the session of the General Assembly of 1832, as at almost every preceding session, a bill had been introduced to repeal the Act of 1818 and restore the Court of Conference as it had existed prior to 1787, and to reduce the salaries of all the judges. On August 15, 1833, Mr. Thomas P. Devereux wrote Mr. Gaston informing him of the death of Judge Henderson, saying: "Nothing, I fear, can save the Supreme Court, unless you will consent to take a seat upon it. . . . All know that you are capable, and many know that you have a moral sense which impels you to the discharge of every duty."

On May 19, Mr. Gaston, answering the letter, said that until lately he had supposed himself exempt from the necessity of deciding whether he should not accept an office under the State. He had doubted whether the Constitution did not disqualify Roman Catholics from holding an office, and with such doubt he should have deemed it sinful to accept an office if tendered, but a year or two since the office of Justice of the Peace was conferred upon his son and, before he decided to qualify, he felt it a duty to examine whether the Constitution contained such disqualification.¹ "I then came to the conclusion, aided by one of the best legal understandings in the State, that whatever reason there might be to conjecture, that some of the framers of the Constitution intended to prohibit Roman Catholics from holding office, *judicially*, it must be expounded as not declaring such disability." The reference to "the opinion of one of the best legal understandings in the State," is explained by a letter to Gaston from Judge Ruffin, May 23, 1832, in which, at great length, and with much care, he examined the questions from every angle and concludes: "I have much confidence in the

¹Art. XXXII of the Constitution of 1776, to which Gaston refers, is as follows:

"That no person who shall deny the Being of God, or the Truth of the Protestant Religion, or the divine authority either of the Old or New Testament, or shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office, or place of trust or profit, in the Civil Department within this State."

conclusion I have long ago arrived at, that a Roman Catholic may lawfully, before God and man, undertake to serve North Carolina to the best of his ability in any civil office according to his natural allegiance and his personal duty. . . . I am very decidedly persuaded, and have long been, that Roman Catholics cannot, without giving to the terms of the Constitution a latitude and force altogether unauthorized, be excluded from civil office." After naming other considerations, entering into the question of accepting the office, Gaston writes to Mr. Devereux: "I shall then leave it to a few friends—in whose integrity, knowledge of what would be expected from me, and in whose frankness I can confide, to say what duty demands of me and this friendly tribunal I wish to consist of Governor Swain, Mr. Badger and yourself." In his letter to Mr. Devereux, Gaston mentions, as one of the "very serious" reasons causing him to hesitate about accepting office, that he is in debt and sees no prospect of speedily relieving himself if he abandons the Bar. He says: "When I look back upon my culpable inattention to pecuniary matters, I find it difficult to account for my folly. . . . My resolution was formed to pay off my debt by my labor, and, to a great extent, this has been done. But it has not been fully done. I yet owe about \$8,000 and with my present income I may well hope to accomplish this in two years more. Were I to accept a seat on the Bench, I should abridge that income \$3,500 or more [the salary was \$2,500] there would then be no chance of my paying the debt within that time, or as rapidly as the rules of the banks require." He says that he would not accept the position unless his debt could be placed in other hands than the banks upon such time as he could, out of his salary, discharge it. He concludes his letter:

The office has no charms for me unless there be a strong probability that I can discharge its duties in such way as may satisfy the expectation of the country. Demagogues are every year attacking the office and finding fault with the salary attached to it. I could not but be restive under such attacks were I an incumbent, and I ought not to place myself under so unpleasant condition without a well founded conviction that *duty required it of me*. In the sincerity of my heart I say to you that I do distrust, and greatly distrust, my ability to perform what will be, and what ought to be expected of me.

On September 3, 1833, Governor Swain, Mr. Badger and Mr. Devereux joined in a letter to Gaston, saying that they had arrived at a perfect conformity of opinion, without having been under the necessity, so commonly felt in consultation between members of another learned profession, of making any compromise, or at least sacrificing his interests to apparent uniformity of advice. They wrote: "The welfare of your family is to be preferred to any interest which the public may have in the preservation of the Court and if your family is to be the loser, ultimately by your acceptance we hesitate not to say that you ought to refuse. That your profits must be greatly reduced by accepting the office we all know, but it is a candor which your friendly confidence in us demands from us to say that we think, that by no means decisive of ultimate disadvantage." They suggest that he is advancing in age and that the demands of his professional labors will soon undermine his strength. After discussing the public interests, they conclude: "In a word, we think *your* appointment to the Bench the only event which will preserve the Court."

On August 31, 1833, Judge Ruffin, writes him describing, in intensely strong terms, the difficulties by which he is surrounded and his determination, unless they were removed, to retire from the Bench. The constant attacks upon the Court by members of the Legislature, he denounces in vigorous terms, saying: "I can submit to *any law*; but I cannot degrade myself into a submission to the unauthorized caprice of the sycophants (not the representatives) of the people. *Such* a tyranny ought to be resisted and, in this case, can be resisted only by refusing to eat the bread of dependence."

After describing the qualities which should be found in the judge to be appointed, Judge Ruffin says:

He must be a sound lawyer and a sound man. Where is such a person to be found? How is such a one to be obtained? This communication proves my opinion, who is one such, if not *the* individual? "Thou art the man." . . . How are you to be had? Will the assurance of the almost unanimous wish and expectation of the Bar avail nothing? Have not the arduous labors of many years in chambers and in the courthouse, the silvery hue of thinned locks, the dignity of retirement from contests with your great grandsons in the law; the calmness of dispassionate deliber-

ation and unbiased decision upon the great questions which involve the liberties and rights of our fellow-men, and the pleasure—superhuman almost, of redressing, in the name and by the authority of the law, the wrong done to those who can not redress themselves, never insinuated into your mind that it was now desirable, now proper, to change the theatre of your exertions, because you could be, upon the Bench, more useful, more happy, than at the Bar? Do you mean to devote no portion of the evening of your days to repose, to conversation with your children, to the more perfect service of another Being, whose state is too exalted, and whose name is too awful to be uttered in connection with a worldly occasion, even so grave as this? Do you, who have, with the self denial of a patriot, served your country in almost every other capacity, deny her claim to bring your mature abilities, and your diversified knowledge to her service in the adjudication of the controversies of her people and the settling of doubtful points in her jurisprudence? Is not that claim irresistible when you, and you alone, can sustain, and probably render permanent, her tribunal of justice in the last resort, of which the destruction would be her greatest calamity? . . . I hope your prudence and the undoubtedly large income earned by the diligence of many of the years last past, have saved you from the pecuniary obligations incurred heretofore for unfortunate friends.

Referring to the work of the Bench, the Chief Justice says:

The fact is, that the pursuit of truth instead of victory, does both embellish and invigorate the mind; and the very desire for truth makes it attainable. But for a hesitation upon the propriety of writing, this letter would have been more perspicacious and less fatiguing to you. But after declining it repeatedly in my mind, my hopes and fears overcame my doubts and, *after midnight*, I have written this letter, such as it is. . . . I have written from motives entirely pure towards my fellow citizens, and with those emotions of warm attachment, and perfect esteem which, for many years, have been felt and cherished toward you personally. * * * I said to Devereux that I had rather serve with you than any man on earth.

This letter brought from Gaston a full and frank expression of his feelings. After repeating what he had written Mr. Devereux, in regard to the Constitutional provision, respecting holding office by Roman Catholics, he discloses his financial troubles, saying that he was told that moneyed individuals would be glad to lend

on these terms [payable in annual installments] but I have no turn for negotiations of this sort. I could not bear to make them after accepting office. . . . There is no civil office which man can hold of which I think more respectfully than that of a Judge. If office could have any claims for me it would be the one in question. But I must say that even that office involves a departure from the state of independence, in which I prefer to live. I am now accountable to no human being further than the laws of my God and my country make every one accountable. In office my conduct, my demeanor, my opinions, become, it is thought, a fit subject for everybody's criticism. . . . I admit, unequivocally, that I have no right to consult this preference [for private life] if it be at variance with my duty to my country. The hey-day of life is over, and I am approaching to its close. . . . It is His will that I shall do all the good that I can to my fellow-man. Were I assured that, in taking this office, I should be as useful as you, and some others of my friends think, I would esteem myself bound to say (my engagements to my creditors being first provided for) they may declare me ready to enter upon it if the legislature choose to confer it. . . . And now, my friend, I have laid before you *all*. In the sincerity of my soul I say that if I did but know what I ought to do, I should not hesitate *one instant* in doing it. I can have no peace for the residue of my days if I act against that duty. . . . Suffer me to ask you to counsel me frankly and *disinterestedly*. I assure you, on my honor, that you need not fear to give me offense. . . . If it had pleased God, would that this emergency had not occurred. Would that the life could have been prolonged of that great and good man whom we have lost. What a perspicacious and commanding intellect. What an unshaken firmness of purpose. What an exalted love of justice. What a warm, generous and kind heart was his.

Judge Ruffin replied August 31, 1833, saying that his obligation to Gaston was

heightened by the very ingenuous, explicit and confiding answer which I have received from you, which can only serve to increase the affection which I have long cherished and confirm the respect which I have always entertained for you. I have read it more than once that I might perfectly appreciate the difficulties which have presented themselves to you before giving my reply which, to be useful, must be immediate and which, I doubt not, you will expect by the first post. I must, in the first place, express my sincere and hearty satisfaction at observing that there is no obstacle, as it seems to me, that ought to be deemed serious, certainly not insuperable, to your accepting office. At least were your case mine, I should thus think and act. . . . Everybody expects you to

do your duty. The obstruction supposed by some to be interposed by the constitutional provision, I am very happy to find you have properly overcome. My opinion upon the construction of that clause has before been communicated to you. It remains unaltered and stands confirmed by subsequent reading and continued reflection, as you must necessarily have concluded from the general import of my letter, since I could not, in good faith ask you to do, what I thought you could not, in good conscience, do.

After a discussion of the Thirty-second Article, Judge Ruffin says:

I am, therefore, clear in the conclusion that the very circumstances which some might profess to believe, forbids, rather makes it a *duty*, in you, to accept office. It is known *to all* that *you* do not desire public employment; that you make a sacrifice of private emolument and personal comfort in leaving private life; and that your sole motive is to fulfill the duties of a faithful citizen and a responsible being. . . . I have often thought that with your opinion upon this question, you ought to seek rather than avoid, an opportunity, by action, thus giving the most direct and impressive public memorial to all times and persons to come, of those opinions, and thus save one portion of your fellow citizens from the bitter pangs of persecution, and another portion, from those, still more bitter, of persecuting and proscribing.

Referring to Gaston's pecuniary obligations, he said: With my sentiments expressed frequently in private discourse of the obligation upon all men to pay debts, and to pay them according to the wishes and rights of the creditor, you are too well acquainted to make it necessary that I should say that I honor you for every feeling of your bosom and every word you utter on that point. But I have not the least hesitation in believing that every arrangement you can desire in that respect is attainable. I have not the money myself (what Judge has), or it should be at your service." After naming a gentleman who would be glad to make the loan, with security, Judge Ruffin says: "Allow me, without preface, or profession, to tender such as my name will be deemed, should you have occasion for the use of it." Referring to this question, Mr. Devereux wrote: "Upon the first head of objection [the money] that ought not to weigh a feather or, for a moment, you can have the money almost by return mail, upon expressing

your willingness to take it, and the favor is done by you, not by the lender." Could a man's friends be more generous, or pay a higher tribute?

On September 9, 1833, Gaston writes from Tarboro, N. C., "Having taken all of the measures which I thought necessary to enlighten my judgment, it is my duty to avow to my friends the decision to which I have arrived. You will, therefore, please to understand, and have the goodness to communicate to those who have had the kindness to act with you, that I hold myself ready to accept the vacant seat on the Bench of the Supreme Court, should the General Assembly think proper to call me to it." Mr. Devereux writes, September 12, saying: "You have done all that is incumbent on you to do. Your friends will do the rest." He writes Gaston, November 14, 1833, that Mr. Badger and he had asked the opinion of Chief Justice Marshall, when in Raleigh, upon the construction of the Thirty-second Section of the Constitution. The Chief Justice said that he did not see the least impropriety in giving a written opinion but, from the fact that he was a resident of the State of Virginia, it might be deemed officious in him to do so. He gave them his "views" at full length, having no hesitation in saying that the Thirty-second Article did not prevent Gaston's accepting the position. "That he would not hesitate a moment in doing so." Mr. Gaston's views, written out by him, were sent to Governor W. A. Graham, who was a member of the Assembly and actively supported him. Gaston was elected by a very large majority of the General Assembly, at the Session of November, 1833. Judge Ruffin wrote him, December 2, 1833,

A message is just now delivered from a friend in Hillsborough that you are elected by a large majority which gives us all here [Alamance] most sincere satisfaction. I cannot restrain myself from saying that I cordially unite in the congratulations your friends will tender to you in the triumph which the lovers of virtue and the admirers of ability, great attainments and elevated character, throughout the nation, will feel in the consolatory confidence in the stability of our institutions and the faithful administration of justice. . . . All good men rejoice in the event and all Christians will see in it, and acknowledge the overruling power of the Majesty on high. But above every other citizen, and all

other men, I have especial cause for congratulation to you and self congratulation. . . . With unfeigned sincerity I salute you, with all the respect of an official brother and all the warmth of regard of an affectionate friend.

I deem it well to dwell upon, and set out appropriate portions of the correspondence between Mr. Gaston and the gentlemen named, in connection with his appointment, not because I think any apology necessary for the course pursued by him, but because, for the first time, and long after the departure of all of the eminent citizens who took part in securing his service to the State the exact facts are made public. It is thus manifested that, a charge, made afterwards, that Gaston sought counsel, even to the extent of a dispensation from ecclesiastical authority before accepting the office, is utterly without foundation. Replying to a letter from Mr. C. C. Baldwin of Lexington, Va., editor of the *Gazette*, referring to an article to which his attention was called, he said:

I infer that it contains a vile charge of my having obtained some ecclesiastical dispensation or permission to hold an office under the State of North Carolina, and relieving me from the guilt of perjury in violating my oath to support the Constitution of the State. I know that a charge to this effect has been made in a periodical published at Baltimore, called, I think, the *Religious and Literary Magazine*, for, not long after the adjournment of the Convention [1835], and while I was yet occupied with the duties of the Supreme Court, a copy of the magazine containing such an accusation was sent to me, I suppose by the conductors of the work. It is not easy to determine when it is proper to come forth with a denial of a calumnious charge and when it is most becoming to treat it with silent contempt. The accusation in question seemed to me so preposterous, so ridiculous, that it was scarcely possible for me to notice it gravely, without subjecting myself to ridicule or manifestation of a morbid sensibility. But I was saved from all difficulty in deciding on the course then to be pursued. The style of the article was so uncourteous and the temper which it breathed so malignant, that self respect utterly forbade me from paying any notice to it.

After giving to Mr. Baldwin an account of the course pursued by him, he said:

It is needless surely for me to go further, but I will add that I never had any intercourse, verbal or written, direct or indirect, with

the Bishop of Baltimore on the subject, and that I did not, directly or indirectly, confer with any individual belonging, or professing to belong, to the Catholic Church (out of my immediate household) until after I had announced my unconditional assent to be put in nomination for the office. . . . It is not a pleasant matter for any man of character to have a discussion entertained on the question whether he has, or has not, acted as a scoundrel and a fool, and I regard the wantonness, with which men's characters are dragged before the public, the facility with which slanders are credited, the rashness with which unfounded imputations are attributed by political or sectarian rancor, as among the worst vices of the age.

The foregoing more nearly approaches an outburst of anger than any other language found in Judge Gaston's letters, or other writings. But one more word on the subject. When Governor Graham was a candidate for Vice-President (1852) it was charged that he was unfriendly to Catholics. He wrote the editor of a paper published in New York:

As a friend of the illustrious Gaston, a Catholic, and one of the first men of the present age, after learning that he did not think himself excluded by the test in the old Constitution, I, with other members of the Legislature of 1833, prevailed on him to accept the office of Judge of the Supreme Court of the State, to which at that session we elected him. Judge Gaston's acceptance of this office being criticised on account of his religious belief, he vindicated himself in a letter addressed to me, which I read on the floor of the House, in a speech in his defense at the next session, and now have in his handwriting.

At the time Judge Gaston was elected to fill the vacancy, caused by the death of Judge Henderson, the Court elected, from its members, its Chief Justice. Chancellor Kent wrote to Gaston that he did not understand why he was not Chief Justice, to which he replied that Judge Daniel, having refused to have his name considered for the position, Judge Ruffin and himself cast lots, and, much to his satisfaction, it went to Ruffin. The Chancellor wrote that while it might be true that the position went in the right direction, it was a strange way to elect a chief justice. Of the Court composed of Ruffin, Daniel and Gaston, Dr. Battle, says: "No State of the Union, perhaps, not even the United States, ever had a superior Bench—few ever had its equal. At home and abroad their decisions, as a

rule, had the weight of established and unquestioned law. . . . All three judges had great natural intellects, all had industry, all had unimpeachable rectitude of purpose, all of them had the unlimited confidence of the Bar and laity, all of them were of a conservative temperament, all of them were filled with the desire to decide correctly the cases brought before them and to give a right reason for their decision. Their personal relations were harmonious." With this just estimate from this source, nothing further remains to be said of the Court.

A convention called to consider amendments to the State Constitution, as the result of a long, and at times, intensely exciting struggle between the eastern and western sections, met in Raleigh, June 4, 1835. Among the delegates were many of the ablest and most experienced citizens of the State and several younger men who, later in life, achieved distinction. Nathaniel Macon, who after a long and distinguished career in both Houses of the National Congress, had retired from public service, was unanimously elected President. Judge Gaston sat for New Bern. It is not possible to refer to the many interesting questions debated, frequently at length and with ability, in this convention. Upon the proposition to take from free persons of color the right to vote, which they had theretofore exercised in the State, Gaston opposing it, said that the inquiry was not whether the right should be then granted, but whether it should be taken away.

A person of that class who possessed a freehold, was an honest man, and perhaps a Christian, he did think should not be politically excommunicated, and have an additional mark of degradation fixed upon him solely on account of his color. Let them know they are a part of the body politic, and they will feel an attachment to the form of government, and have a fixed interest in the prosperity of the community, and will exercise an important influence over the slaves.

While he was with a minority of 61 to 65, many of the most enlightened and broadminded delegates concurred with him, among them Biggs, Carson, Daniel, Dockery, Ferree, Morehead, Rayner, Shipp, Seawell, Swain, Toomer. Upon the basis of representation, the question which excited the greatest in-

terest, Gaston stood with the central and western delegates, fixing the number of members and senators as they have remained to the present time. He opposed the abolition of borough representation.

It was upon the amendment to the Thirty-second Section of the Constitution that Judge Gaston made the last, and probably, the most carefully considered and prepared, of his parliamentary speeches. This article, although as we have seen, obscure in its terms, was construed, by some, to exclude members of the Roman Catholic Church from holding offices of "honor, trust, or profit" in the State. It was proposed to strike out the word "Protestant" and insert the word "Christian," thus prohibiting only those who "denied the truth of the Christian religion" from holding such offices. A number of delegates took part in the debate, which took quite a wide range in the domain of doctrine, dogma and history. Many of the speeches, read in this day, are curious illustrations of the mental attitude, and operation of the mind of men of that time. It was expected that Judge Gaston would make a full and frank deliverance of his views. Colonel Creecy, the only person who heard the debate, whom I have heard describe it, says that, after a number of speeches had been delivered, "most of them in favor of retaining the Thirty-second Article, Mr. Gaston slowly arose, and with great deliberation, amid breathless silence, and for two days, riveted the attention of all present, by a speech, which is unequalled in our memory. . . . The fate of the Thirty-second Article was sealed before the speech was completed."

Judge Gaston said that this was the first opportunity which had come to him to make an explanation to the people of North Carolina of the circumstances under which he had accepted, and continued to occupy, the high judicial office which they had been pleased to confer upon him, and which some persons might doubt whether he was constitutionally qualified to hold. He proceeded to state, without calling names, the substance of the correspondence above referred to, concluding:

One more remark on what may be regarded as the *personal* part of this discussion and I shall then cheerfully abandon it altogether. As a citizen of North Carolina, having a deep concern in her institutions and in her honor, I yield to no one in the interest

which I feel, that this question should be properly decided. But as an *individual*, I beg it to be understood that I am utterly indifferent as to the determination of the convention and of the people, except to desire that the constitutional provision be made perfectly explicit. If it be thought essential to the good of the State that a monopoly of offices shall be secured to certain favored religious sects, let it be so declared. He who now addresses you, will not feel a moment's pain, should such a decision render it his duty to return to private life. Office sought him—he sought not office. . . . Let him but know what is the constitution of his country and be it in his judgment wise or unwise, equal or unequal, he will, to the best of his understanding and ability, in his own case, and in all others, uphold and defend it. So he has often sworn, and as he acknowledges no power which can absolve, so he holds that no inducement of ambition or interest can excuse him from the exact and faithful fulfillment of this oath.

He declared that had he made up his mind as to the course which he would pursue, if the Convention refused to make the provision clear, “he would not *at this moment* reveal the determination to his nearest and dearest friend on earth.” Among many basic truths forcibly and clearly stated, he said:

Law is the proper judge of *action*, and reward or punishment is its proper sanction. Reason is the proper umpire of *opinion*, and argument and discussion its only fit advocates. To denounce opinion by law is as silly and, unfortunately, much more tyrannical, as it would be to punish crime by logic.

He quoted from Bancroft the example set by Lord Baltimore securing religious freedom, in founding his colony in Maryland, saying:

The next example of religious freedom secured in the original and fundamental institutions of a State, was given to the world by the great and amiable Roger Williams, the founder of Rhode Island.

. . . This extraordinary man, at the age of thirty had matured a doctrine which secures to him imperishable fame.

. . . He announced his discovery under the simple proposition of the sanctity of conscience—the civil magistrate should punish crime but never control opinion—should punish guilt, but never violate the sanctities of the soul.

Gaston's speech abounds with large liberal views and opinions; it is a manly, frank, courageous defense of his position. There is a total absence of any apology, in the usual sense in

which the word is used. Colonel Creeey says that, at times, and with reference to certain innuendoes, made by a few delegates Gaston was quite severe. To the plea made by one of the delegates that he regarded himself as instructed by his constituents to retain the prescriptive clause, Gaston made some pertinent and very sound observations on the doctrine of instructions. It so happened that in the county from which this delegate came, the record contradicted his contention and rendered quite ridiculous his claim that he was unable to vote for the proposed amendment. The venerable President said:

To him it appeared too plain a question to argue that every man may worship God according to the dictates of his own conscience. But it is a practical denial of its truth to debar a man from office because he may entertain certain religious opinions. There was a member of this convention whose father had been inhumanly murdered by the Tories in our Revolutionary struggle—he begged pardon for the allusion, but it was history—and shall it be said that his son, baptized, as it were, in the blood of his father, was unworthy a seat in our Legislature?

The proposed amendment was adopted by a vote of 74 to 51.

Judge Gaston's speech was widely circulated as a noble defense of religious freedom. Mr. George Bancroft wrote, thanking him for honorable mention and "still more what I value more highly than praise from a man whose name I have never heard mentioned but with praise, that what I had written furnished an argument favorable to intellectual liberty. It is the highest reward to which I could have aspired. . . . On reading your speech I could not but say how much my heart is with the cause which you defended and how deeply I was moved by finding myself summoned as a witness in its defense." Chancellor Kent wrote that he had read the speech and said: "I highly approve of its logic and admire the whole texture and taste and candor and eloquence of its production. You have placed the Catholic faith in a strong point of view." Other commendations from distinguished sources came to him. This was a fitting conclusion of Judge Gaston's parliamentary labors. He never again sat in a legislative body. His last address before a public assembly was made at the Commencement of Princeton University in 1835, at which time the honorary degree of LL.D. was conferred upon him.

Invitations to deliver literary addresses at Yale College, Georgetown and other institutions of learning are found among his papers, all of which he declined, giving as his excuse the demands made upon his time by his judicial work. He also pleaded advancing age.

The Whigs having elected a majority of the General Assembly of 1840, a desire to elect him to the United States Senate was generally expressed. Hon. Richard Hines wrote him that since the late election he had been much in the middle and eastern parts of the State, and a little in the western, and took pleasure in saying that he believed it to be the unanimous wish of the Whigs, both in and out of the Legislature that "you should be one of our Senators in the next Congress of the United States. There is no doubt the Legislature will take pleasure in electing you." Hon. John G. Bynum, who was a member elect from the west, wrote him that it was the unanimous desire of the people of that section that he should be their Senator. In his reply to these gentlemen, declining to be a candidate, he said:

I confess that, although my mind was fully made up before I received your letter, and although I had previously made known this determination to other friends who had addressed me on the subject, I feel embarrassment and pain in being obliged to say to you that I must decline a compliance with your wishes. I am apprehensive lest my conduct should appear morose or uncourteous—lest I should subject myself to the imputation of insensibility to kindness, or indifference to the public welfare. . . . With all my exertions to tame down feelings to the standard of reason, I find my heart yet throbbing with emotion at any indication of favorable opinion of my fellow citizens and that heart will have wholly ceased to beat before I cease to take a warm interest in the happiness of this glorious Union, and especially of our part of it—the good Old North State. . . . Besides, I believe the faithful performance of the duties of my present office is as important to the public welfare as any which it would be within my power to render in the political station to which you invite me. To give a wholesome exposition to the laws, to settle the fluctuations and reconcile the seeming conflicting analogies of judicial decisions, to administer justice in the last resort, with a steady hand and upright purpose, appears to me among the highest of civil functions, and so long as God spares me health and understanding to perform these faithfully, how can I better serve my country?

On December 20, 1840, Governor Graham, then United States Senator, wrote Judge Gaston that the North Carolina delegation had determined to urge upon President-elect Harrison the appointment of a citizen of this State as a member of his cabinet, or some other position of distinction "as befitting, if not due, to the State." He further wrote that "if he shall be disposed to gratify us and take our counsel in making a selection, we shall unanimously recommend your name, should he tender either the office of Secretary of State, or the mission to England or to France. . . . This letter will require no answer and is written without the knowledge of any other member of the delegation, as a mark of my regard." Judge Gaston promptly replied, saying:

You are good enough to say that no answer is required and I have felt some difficulty in determining whether an answer ought to be returned to the communication. . . . But as the subject has been mentioned to me, and my silence might lead to mistaken inference, I have deemed it expedient and most consistent with frankness to say to you (leaving you at liberty to make such use of the information as you think proper) that I hope no such nomination will be made. My reason simply is that on the one hand I am reluctant to appear churlish, or to give offense to the people of North Carolina, by rejecting public appointments—and, on the other, I have a sincere desire to keep aloof from political life for the residue of my days.

The letter concludes with the assurance that if he had been a member of the General Assembly he "should most cordially have concurred in your election to the Senate." He had the satisfaction of seeing his long time and loyal friend, Mr. George E. Badger, called into the Cabinet as Secretary of the Navy.

Judge Gaston's opinion regarding the relations which he thought should exist between judicial officers and partisan politics, was very clearly and strongly expressed in a letter addressed to a committee of gentlemen inviting him to attend a convention of the Whigs of Alabama, September 20, 1840. He said:

Except by the exercise of my franchise as a voter, I abstain from taking any part in the partisan contest. Far be it, directly or indirectly, to censure the many excellent men who, similarly

situated with myself, entertain different notions as to the course of duty and propriety. But while I presume not to arraign their conduct, I must act upon my own conviction of what is right. It is a deeply rooted sentiment with the people of the "good Old North State" that their judges ought to keep aloof from political contentions. The unaffected respect that I feel for all those long settled and habitual opinions which give a character to the State, and which cannot be uprooted without injury to its fundamental institutions, would of itself be sufficient to enjoin upon me obedience to the sentiment. But it comes also recommended to my judgment by considerations of high public expedience.

During the remainder of his life he devoted himself exclusively to the performance of his judicial duties, finding relaxation in correspondence with his daughters and the society of his friends. It is not possible to refer to his many able and interesting opinions. There are, however, a few which stand out with special prominence and which demand notice. In *State v. Davis*, 15 N. C., 612, he states with admirable clearness, the duty of a Judge in conducting a trial before a jury, saying:

The task allotted to the presiding judge is confessedly one of great difficulty and delicacy. He is to rescue the case from the misrepresentation and misconception of the evidence, and from the false glosses put upon it by ardent and ingenious advocates, he is to present a fair, full and impartial statement of the evidence as applicable to the matter in controversy; he is to collect the testimony of concurring and conflicting witnesses and indicate the presumptions or inferences previously formed on such occasions, generally found to be accordant with truth.

In the celebrated case of *State v. Will*, 18 N. C., 121, in which a negro slave had been convicted of murder for the homicide of his overseer, under circumstances of great aggravation and reasonable apprehension of his life, reversing the judgment of the Court below, in which it was held that, as a matter of law, the prisoner being a slave, malice was presumed, Gaston said:

In the absence, then, of all precedents directly in point, or strikingly analogous, the question recurs, if the passion of the slave be excited into unlawful violence, by the inhumanity of the master, or temporary owner, or one clothed with the master's authority, is it a conclusion of law that such passion must spring from diabolical malice? Unless I see my way clear as a sunbeam, I can not believe that this is the law of a civilized people, and a Christian land.

I will not presume an arbitrary and inflexible rule so sanguinary in its character, and so repugnant to those holy Statutes "which rejoice the heart and enlighten the eye, and are true and righteous altogether." If the Legislature should ever prescribe such a law, a supposition which can scarcely be made without disrespect, it will be for those who then sit in the judgment seat to administer it. But the appeal here is to the common law, which declares passion, not transcending all reasonable limits, to be distinct from malice. The prisoner is a human being degraded indeed by slavery, but yet having "organs, dimensions, senses, affections, passions, 'like our own.'" . . . Express malice is not found by the jury. From the facts I am satisfied, as a man, that in truth malice did not in fact exist, and I see no law which impels me, as a Judge, to infer malice contrary to truth.

In *State v. Manuel*, 20 N. C., 601, Judge Gaston, writing for the Court, held that a manumitted slave was a citizen of the State. After a historical review of the status of persons in the colony, prior to the separation from England, he says:

Upon the Revolution, no other change took place in the law of North Carolina, than was consequent upon the transition from a colony dependent on a European King to a free and sovereign State. Slaves remain slaves. British subjects in North Carolina become North Carolina freemen. Foreigners, until made members of the State, continued aliens. Slaves manumitted became freemen, and therefore, if born within North Carolina, are citizens of North Carolina, and all free persons born within the State are born citizens of the State.

The opinion is cited as "sound law" by Judge Curtis in his dissenting opinion in the Dred Scott Case. Professor Wigmore refers to Gaston's opinion in *Clary v. Clary*, 24 N. C., 78, as "the great lawmaking and argument-furnishing precedent."

In a letter to his daughter he says that the Court has been engaged "during the entire week in the consideration of one case." An examination of our reports discloses but two cases decided during Gaston's time on the Bench, which have been overruled. In both Judge Daniel dissented. I find but one dissenting opinion written by Judge Gaston. In *State v. Miller*, 18 N. C., 500, in an opinion of which Chancellor Kent wrote: "That it appears to me to be a piece of close, logical, forcible, analytical, critical and irresistible reasoning and investigation of the principles of law and of the authorities applicable to the

case," he insisted that any separation by the jury in a capital case invalidated the verdict. It is probable that his fear of invasion of well defined and clearly established rules of procedure carried him to an extreme view in this case. He said:

Separation of the jury was never allowed, as far as I can see, in any capital case, unless necessity required it. . . . One of the duties of Judges is to hand down the deposit of the law, as they have received it, without addition, diminution or change. It is a duty, the faithful performance of which is exceedingly difficult. They must refrain from any attempt at novelties, listen to no suggestion of expediency, give in to no plausible theories and submit to be deemed as old fashioned and bigoted formalists when all around are running on a supposed career of liberal improvements.

During the eleven years that he was on the Bench but few dissenting opinions were filed by any of the judges.

Judge Gaston was, for forty-two years, a member of the Board of Trustees of the University of North Carolina. Mr. Phillips says that, although he resided quite a distance from Chapel Hill, he would visit that place in ordinary term time to attend the classes, although without special ties to any student there. "I particularly recollect his presence at six o'clock before breakfast, at a recitation in the freshman room to which I then belonged."

Dr. William Hooper says: "Ever since I was a child of twelve years, wandering under the magnificent oaks that lend their useful shade to the students of Chapel Hill, the name of William Gaston acted like magic on my, and other, youthful minds. The news that he was to be at our approaching examination, sent a tremor through the heart of the laggard, while it warmed, with an honest glow, the breast of the diligent student, who knew that he would have an auditor and a witness who could appreciate his merit as a scholar, and whose then dawning reputation made even a smile of his thrilling to the soul. Well do I remember the day when a schoolboy, just entering my teens, I stood before a bar of trustees, of which he was the luminary, just then in the eastern horizon of his fame, beginning to give his country cheering auguries of his resplendent meridian."

On January 23, 1844, in his office, while engaged in conver-

sation with Governor Morehead, Judge Ruffin, the Attorney-General, and several other friends, Judge Gaston was taken ill. A letter from Governor Morehead states that he had been indisposed during the day, but was thought to have entirely recovered. The gentlemen named had called at his office, after supper, and were engaged in conversation, in which Judge Gaston took part. Some reference being made to one, who at a party in Washington City, at the home of Joseph Gales, had said that he did not believe in the existence of God. Judge Gaston, with emotion and emphasis, declaring his faith in the Divine Ruler of the world and the truths of Christianity, fell back on the bed and expired. He who had, throughout his life held fast to the integrity of the "faith early instilled into his mind by maternal piety," passed away from earthly scenes, with a confession of that faith on his lips.

Judge Gaston spent the time, while attending the Court, or in the discharge of other official duties in Raleigh, in the home of Mrs. Eliza Taylor, the wife, and for fifty years, as recorded on her tomb, the faithful widow of Hon. James F. Taylor, Attorney-General of the State. It was in the home of this excellent, and during her long and useful life, highly honored, woman, that he wrote his judicial opinions. He occupied the office on the corner of Salisbury and Hargett streets.¹ It was there that the great leaders of the Bar, and other professions, governors, senators, law students, and all others who sought his society, met and found instruction and pleasure in his conversation. It was there that he wrote the words of "The Old North State," set to music by the daughter of Mr. Taylor, a lady who, at a very advanced age, has, within the present year, passed away. She was probably the last survivor of those who had personal recollection of Judge Gaston, of whom, after a description of his personal appearance, she said: "He was fond of children and every winter's evening when my mother did not have company, he would sing to us, or tell us tales from the Arabian Nights—before we were able to read them. When we were older he read Telemachus to us, translating from the French. He was an excellent French scholar. He taught us much of astronomy, taking us out of doors at night and show-

¹The building was torn down to make room for a new building in the Autumn of 1914

ing us the different planets and constellations. He loved the society of young people."

Mr. Phillips, in the address referred to, says: "Fond of the law, well bred and freshly read therein to his latest day, he was also distinctively a classical scholar and a man of letters—a forward promoter of higher education and, upon a wider field, an adviser and inspirer of students of the law. His finely chiseled features glowed with a benign serenity."

Judge Gaston, for many years received in his home, students of the law for instruction. Among them were many who attained high professional and judicial position. In a letter from Raleigh to his daughter, he sends a message to two of his students saying that he expects them to come to Raleigh for examination and that "they must be prepared to tell Judge Daniel all about the *old feudal tenures*, when the Statute *de donis* was made, *when* and *how* lands became divisible, and what of the enactment and what the operation, of the Statute of Uses. They must be as perfect as they can in the second volume of Blackstone."

His death evoked expressions of profound grief, high appreciation of his character, and affection for his person. The Attorney-General, in announcing the event to the Court, spoke with deep emotion, and the Chief Justice declared that the State had lost "a good man and a great Judge."

Judge William H. Battle, by invitation of the two societies of the University of North Carolina delivered an admirable address upon his life and character. At Georgetown, Princeton and other institutions of learning eulogies were pronounced. The editors of the *National Intelligencer* said: "The Southern mail comes to us freighted with the painful intelligence of the death of the Hon. William Gaston, one of the Judges of the Supreme Court of the State of North Carolina, widely known in other States as an eminent statesman and one of the purest and most upright of men as well as a profound and accomplished jurist."

In many counties public meetings were held and appropriate addresses were made.

The members of the General Assembly unanimously adopted, and recorded on the journals of both Houses, resolutions expres-

sive of the loss sustained by the State in the death "of one of its most patriotic citizens, a faithful public servant and a learned and impartial judge." It was declared: "That in the course of a long and varied life, his bright career is left as an example worthy of imitation and his unsullied character one of the brightest jewels of the State." The State "has inscribed his name on her towns and counties, and as long as talents are revered, services honored and virtue esteemed, the name of Gaston will be cherished."

I have thought that none of the eulogies speak more eloquently, or set forth more strongly, the virtues of William Gaston, the man, than those adopted by the "free people of color" of the town of his nativity, and his home. At a meeting held in St. John's Lodge, New Bern, these people said:

Others have spoken of him as a great statesman, a learned Judge, a ripe scholar. They are better judges of these things than we are; in our humble situation we shall confine ourselves to his walk among us. As our neighbor, our friend and kind protector, it is our privilege to speak from personal observation. Where so many virtues and graces are blended in the same individual it is not easy to particularize. Judge Gaston was an example in word and conversation, in spirit and purity. He was the friend of the widow and the orphan—he was a kind and indulgent master . . . the most of his servants can read and write, the consequence is they are a most intelligent set of people.

Judge Gaston was a friend of emancipation, he not only emancipated several of his own people, but he bought others and set them free. . . . He was a Christian in deed and in truth; his religion was not a thing of form and decencies, it was a pervading principle that entered into all his concerns, all his thoughts and all his hopes. His course was marked with no obliquity, his path was a shining light—the voice of calumny shrunk abashed at his presence.

They resolved that they would "attend his funeral and walk in the procession"; that they held themselves ready to join with their fellow-townsmen in subscribing funds to raise a suitable monument to his memory; that so soon as a correct likeness of him could be obtained, they would subscribe for a sufficient number to place one in the dwelling of every freeman in the town.

Judge Gaston was married three times. His first wife, Miss Susan Hay, died within a year. His second wife was Miss

Hannah McClure. His third wife, Miss Eliza Worthington, of Georgetown, died in 1819. During the last twenty-five years of his life he was unmarried. The descendants of his daughters reside in the State of New Jersey.

Judge Gaston's only son, Alexander Gaston, left two sons, William, who after his graduation at West Point, entered the Army, and was killed in a battle with the Indians on the western frontier. Hugh Gaston, the other son, was mortally wounded in the battle of Sharpsburg. One who was with him, describing a charge of the Forty-eighth North Carolina Regiment, says: "Hugh Gaston, as true and brave a soul as ever died for liberty, was mortally wounded quite fifty yards beyond the fence."

It is peculiarly appropriate that these statues of the great Chief Justice¹ and his associate, so closely related in their personal and official lives and services, both of whom, with their associate Judge Daniel, "administered justice in the last resort, with a steady hand, and an upright purpose," should stand as memorials of the past and inspiration to the future generation of North Carolina lawyers and judges.

¹A statue of Chief Justice Ruffin stands in the same building with the bust of Gaston.

PRESENTATION

BY HON. J. CRAWFORD BIGGS, PRESIDENT OF THE NORTH
CAROLINA BAR ASSOCIATION.

The true student of history knows that North Carolina is rich in the great deeds of her sons, but until recent years no organized effort had been made to perpetuate her history. There is no higher or nobler duty than the cultivation of civic pride and it is a source of much gratification to all loyal North Carolinians to realize that the various patriotic organizers and the friends and relatives of the distinguished men of former generations are beginning to preserve in marble and bronze the lineaments of the illustrious dead. Every such act helps to place our Commonwealth in its true position among the States.

The marble bust which I have the honor to present this evening was made from the original plaster cast which was executed from life in the year 1833 by a distinguished English sculptor, Ball Hughes who, while on a visit to this country, made busts of other distinguished American citizens, among them, John Marshall, Daniel Webster, Alexander Hamilton, and Martin Van Buren. But for the burning of the State House in 1831 we would not have this bust. This fire on the 21st of June burned the Capitol here and completely destroyed Canova's celebrated Statue of Washington. On the 27th of June, 1831, the English sculptor, being at that time in this country and learning of the destruction of the statue, wrote Hon. Thomas P. Devereux and offered his services for the restoration of that invaluable work. Later Mr. Hughes visited Raleigh and on the 7th of December, 1831, wrote Governor Stokes that he had carefully examined the extent of the injury to the statue and that he could restore it to all of its former beauty and invest it with all of its original grandeur. The Governor sent a message to the Legislature with reference to the proposition of Mr. Hughes and a select committee, to which the message was referred, made a report through Judge Gaston recommending that a contract be made with Mr. Hughes for the restoration of the statue. The report was adopted by the Legislature and contract was accordingly made and Mr. Hughes in May, 1832, undertook the work. But shortly after the execution of the contract, he left Raleigh and

for more than a year did nothing towards the restoration of the statue. In 1833 Judge Gaston called to see Mr. Hughes at his studio in New York and wrote Governor Swain on the 21st of November, that he had conversed with him freely in relation to his unexecuted contract of restoring the statue of Washington. It was doubtless on the occasion of this visit that the plaster cast of Judge Gaston was made. Hon. Louis D. Henry, a prominent attorney of this State and Democratic candidate for Governor against Governor Morehead, was requested by Governor Swain to act as his agent in ascertaining what progress the sculptor was making on the work of restoring the statue of Washington. Mr. Henry in 1834 visited the sculptor in his studio in New York and after advising the Governor that Mr. Hughes promised to carry out his contract, wrote as follows:

Mr. Hughes is a man of genius in his profession, the beau ideal of enthusiasts. I called upon him at his workshop. He received me with great politeness and took great pains to show me all of his works then in different stages of progress. I admired all, but more particularly his statue of Alexander Hamilton and bust of our friend, Mr. Gaston. The bust of Mr. Gaston is the most admirable likeness and truest to nature and the original of all the works of painting or statuary I have ever seen. I pointed it out in an instant, although I had upon the first recognition but an askance view and was ignorant that such a work was there or in contemplation. May I venture a passing suggestion that so admirable a likeness of a man who is universally esteemed and who is in fact so great an ornament to our State ought to be set up in the room of our State House or in the room of our Supreme Court? If the Legislature will not, I am clear the Bar should by permission of the Legislature.

I believe the work was undertaken by Mr. Hughes of his own accord.¹

The replica to be unveiled tonight was made from the original cast of Mr. Hughes by Mr. F. H. Packer the sculptor of the Bagley Statue and of the statue of Chief Justice Thomas Ruffin which will be presented soon by the Bar Association to the Supreme Court.

On behalf of the North Carolina Bar Association, it gives me great pleasure to present to the State of North Carolina this bust of Judge Gaston as a memorial of their regard and veneration for his services to his native State.

¹Connor, R. D. W.: Canova's statue of Washington, Publications of the North Carolina Historical Commission, Bulletin No. 8.

ACCEPTANCE

BY GOVERNOR LOCKE CRAIG

We have listened with delight and profit to the scholarly, masterful and sympathetic portrayal of the character of William Gaston. We have heard the elegant and graceful presentation of the marble bust.

The State accepts this statue, and with gratitude to the Bar Association of North Carolina. It will be placed in one of the halls of the Administration Building, there to dwell through the coming centuries with the portraits and the statues of those who have ennobled the State, and contributed to the strength and glory of the English speaking race.

William Gaston has of right a place in this Pantheon of our great men,—*primus inter pares*. His profound mind was enlarged and adorned by the erudition of the student, and the culture of the man of letters. As orator, statesman and judge, he was among the very foremost, and devoted all of his splendid gifts and attainments to the service of his country, and to the service of men. He belonged to the highest order of nobility, and ever maintained his ideals and his character in exalted purity. He set the highest standard for private place and for public office. He gave a tone to the life of the State in the time of her youth that vitalizes and strengthens her now, and aspire to higher things, will look upon this statute to remember, cherish him, for he is to us an inheritance more precious than wealth or rich gifts, or princely endowments.

The men and the women of this and other generations, who aspire to higher things, will look upon this statue to remember to admire, and to emulate his life.

E 39 81 4





ECT 81

N. MANCHESTER,
INDIANA 46962

LIBRARY OF CONGRESS



0 011 838 613 9